

FILED

UNITED STATES COURT OF APPEALS

DEC 16 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RONALD J. MCINTOSH,

Petitioner - Appellant,

v.

ERIC H. HOLDER, Jr., Attorney General
and ATTORNEY GENERAL STATE OF
CALIFORNIA,

Respondents - Appellees.

No. 10-17067

D.C. No. 3:09-cv-00750-CRB
Northern District of California,
San Francisco

ORDER

Before: PAEZ and IKUTA, Circuit Judges.

The request for a certificate of appealability is granted with respect to the following issues: (1) whether appellant is entitled to an equitable exception to AEDPA's statute of limitations because he has made a credible showing of actual innocence; (2) whether, in relation to appellant's claims concerning witness David Younge, appellant is entitled to a delayed commencement of AEDPA's statute of limitations period based on the discovery of new evidence regarding Younge, and if so, whether appellant is entitled to habeas relief on the merits of these claims; and (3) whether, in relation to appellant's claims concerning potential defense witness Jim Green, appellant is entitled to a delayed commencement of the statute of limitations period based on the discovery of new evidence regarding Green. *See*

28 U.S.C. § 2253(c)(3); *see also* 9th Cir. R. 22-1(e); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000).

The court hereby grants appellant in forma pauperis status on appeal, based on his application to proceed in forma pauperis filed in the district court on February 19, 2009.

The court sua sponte grants the appointment of counsel. Counsel will be appointed by separate order.

The Clerk shall electronically serve this order on the appointing authority for the Northern District of California, who will locate appointed counsel. The district court shall send notification of the name, address, and telephone number of appointed counsel to the Clerk of this court at counselappointments@ca9.uscourts.gov within 14 days of locating counsel.

If appellant does not wish to have appointed counsel, appellant shall file a motion asking to proceed pro se within 14 days of the date of this order.

The opening brief is due March 5, 2012. The answering brief is due April 4, 2012. The optional reply brief is due within 14 days after service of the answering brief.

If Eric H. Holder, Jr. or the Attorney General for the State of California are not appropriate appellees in this case, counsel for appellees is directed to file a

motion to substitute party within 21 days of the filing date of this order. *See* Fed.

R. App. P. 43(c).